

NOT FOR OFFICIAL PUBLICATION

THE COURT OF CIVIL APPEALS OF THE STATE OF
OKLAHOMA

DIVISION I

ZACHARIAH L. ROSS,)	
Plaintiff/Appellant,)	
)	
vs.)	Case No. 101,140
)	
STATE OF OKLAHOMA,)	
Ex rel. OKALHOMA)	
DEPARTMENT OF PUBLIC)	
SAFETY,)	
Defendant/Appellee.)	

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE GLENN M. JONES, JUDGE

AFFIRMED

Zachariah L. Ross,
Oklahoma City, Oklahoma, *Pro Se* Plaintiff/Appellant,

Kenneth T. Linn,
General Counsel,
Oklahoma Department of Public Safety,
Oklahoma City, Oklahoma For Defendant/Appellee.

OPINION

OPINION BY BAY MITCHELL, JUDGE:

APPENDIX A

¶1 Zachariah L. Ross, Plaintiff/Appellant, appeals from a district court judgment sustaining a one-month suspension of Appellant's driver's license by the Oklahoma Department of Public Safety (DPS), Defendant/Appellee. For the reasons set forth below, we affirm.

¶2 Appellant amassed eleven points on his driving record due to six separate driving infractions between December, 2001, and May, 2004. On June 5, 2004, under the authority of Oklahoma Administrative Code (OAC) 595:10-7-6¹, DPS notified Appellant his driving privileges was to be suspended for one month beginning July 5, 2004. Appellant timely filed the instant district court action challenging the suspension pursuant to 47 O.S. Supp. 2003 §6-211. Appellant did not dispute the accuracy of his driving record at trial, but rather argued the suspension violated several constitutional provisions. The trial court rejected Appellant's arguments and upheld the suspension.

¶3 Because the facts of this case are undisputed, only questions of law are presented on appeal and therefore our review is *de novo*. *In re Estate of Kendall*, 1998 OK CIV APP 171, ¶4, 968 P.2d 364, 365. This Court has plenary, independent and nondeferential authority to reexamine the trial court's legal rulings. *Id.*, citing *Neil Acquisition L.L.C. v. Wingrod Inv. Corp.*, 1996 OK 125, 932 P.2d 1100 n.1.

¶4 Appellant advances six propositions of error on appeal: Two propositions assert the driver's license suspension constituted double jeopardy; two propositions contend the suspension violated Appellant's due process rights; one proposition claims OAC 595:10-7-6 and §6-206(B) operate as a bill of attainder in violation of OKLA. CONST. Art. 2, §15; and one proposition merely avers Appellant was never

¹ OAC 595:10-7-6 allows DPS to suspend the driving privileges of any person who accumulates ten or more points on his or her driving record. The statutory authority for such action is found in 47 O.S. Supp. 2003 §6-206(B).

informed that any points were being placed on his driving record as a result of his citations.

¶5 We initially note Appellant's last proposition of error regarding lack of notice of driving record points is not supported by argument or citation of authority. Accordingly we do not consider it on appeal. *Red River Constr. Co. v. City of Norman*, 1981 OK 20, ¶10, 624 P.2d 1064, 1068. We reiterate that litigants proceeding *pro se* in a civil appeal are held to the same standard as an attorney. *Funnell v. Jones*, 1985 OK 73, ¶4, 737 P.2d 105, 107.

¶6 The Oklahoma Supreme Court has held:

The operation of a motor vehicle on a public highway is not a natural, absolute right, but a conditional privilege which may be granted, suspended, or - revoked under the police power of the state. A driver's license is not a contract of property right in the constitutional sense, and therefore its revocation does not constitute the taking of property. The privilege is granted to those who are qualified, who comply with reasonable police power requirements in the interest of public safety and welfare, and is withheld from those who do not.

Robertson v. State ex rel. Lester, 1972 OK 126, ¶9, 501 P.2d 1099, 1101. With this precedent in mind, we address the remainder of Appellant's propositions of error, beginning with his bill of attainder argument.

¶7 Article 2, §15 of the Oklahoma Constitution mandates that no bill of attainder shall ever be passed. "A bill of attainder is a legislative act which inflicts punishment without a judicial trial." *Haley v. Okla. Alcoholic Beverage Control Bd.*, 1984 OK CIV APP 58, ¶18, 696 P.2d 1046, 1049. *Accord U.S. v. Brown*, 381 U.S. 437, 441-2, 85 S.Ct. 1707, 1711, 14 L.Ed.2d 484 (1965). Such bills focus on past action. *American Communications Ass'n v. Douds*, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed.2d 925 (1950). "[A] bill of attainder exists if there is nothing that those persons affected

by the law could ever do to change the result.” *Haley* at ¶19, 696 P.2d at 1049, citing *Douds*, 339 U.S. at 414, 70 S.Ct. at 692.

¶8 Assuming for the purposes of this opinion that suspension of a driver’s license constitutes “punishment” under Art. 2, §15, see *Price v. Reed*, 1986 OK 43, ¶11, 725 P.2d 1254, 1259-60 (driver’s license revocation is part of civil/regulatory scheme that serves governmental purpose vastly different from criminal punishment), there is something Appellant – or licensed driver – can do to change the result of the application of OAC 595:10-7-6. There are various ways under OAC 595:10-7-10 that drivers can obtain a reduction in the number of points on their driving record. One method involves taking a DPS-approved driver improvement or defensive driving course and another involves simply driving for a specified period of time without being convicted of a traffic offense. Neither OAC 595:10-7-6 nor §6-206(B) constitute bills or attainder.

¶9 With respect to Appellant’s double jeopardy arguments, we iterate the double jeopardy clause of OKLA. CONST. Art. 2, §21, does not apply to civil driver’s license revocation proceedings. *Price v. Reed*, 1986 OK 43 at 11¶, 725 P.2d at 1259-60. Accordingly, those two propositions of error are without merit.

¶10 As his fourth and fifth propositions of error, Appellant argues his right to due process of law under OKLA. CONST. Art. 2, §7², was violated because DPS ordered his driver’s license suspended before any judicial action was taken, he was forced to file a suit to challenge the suspension, and due process was not afforded to him until *after* his license was suspended. Due process is accomplished by “an orderly proceeding adapted to the nature of the case, before a tribunal having jurisdiction, which proceeds upon notice, with an

² Art 2, §7 states, “No person shall be deprived of life, liberty, or property, without due process of law.”

opportunity to be heard, with full power to grant relief.” *State ex rel. Okla. Employment Sec. Comm’n v. Morrow*, 1994 OK CIV APP 86, ¶14, 877 P.2d 1182, 1185, quoting *Kingwood Oil Co. v. Corp. Comm’n*, 1964 OK 241, ¶0, 396 P.2d 1008 (syllabus 2).

¶11 Appellant was notified in writing by DPS that his license was going to be suspended. He challenged the proposed suspension first before a DPS hearing officer and then in district court. Appellant was afforded an opportunity to present evidence at trial and challenge the evidence presented by DPS. Only after such procedures did the district court issue an order suspending Appellant’s driver’s license. The record further reveals, however, that Appellant’s driving privileges have yet to be suspended because the trial court’s ruling was stayed during the pendency of this appeal. Appellant does not complain about notice or an opportunity to be heard, nor does he argue DPS or the district court lacked jurisdiction or the power to grant him relief. He simply does not like the process utilized by the State in revocation proceedings. Such dislike does not arise to a constitutional violation. Due process of law was accomplished here.

¶12 On the basis of the foregoing, we hold the trial court correctly sustained the one-month suspension of Appellant’s driver’s license. Accordingly, the judgment of the trial court is affirmed. Appellant’s “Emergency Motion for Stay, Motion for Sanctions, Motion for Modification, and Motion for Contempt,” filed during the pendency of this appeal, are hereby denied.

¶13 AFFIRMED

ADAMS, P.J., and BUETTNER, C.J. (sitting by designation), concur

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUN 16 2005

MICHAEL S. RICHIE
CLERK

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

ZACHARIAH L. ROSS,)	
Plaintiff,)	
)	
vs.)	No. CJ-04-5313
)	
STATE OF OKLAHOMA,)	
Ex rel. OKALHOMA)	
DEPARTMENT OF PUBLIC)	
SAFETY,)	
Defendant.)	

JUDGEMENT/FINAL ORDER

This action came on for hearing/trial on this 28 day of July, 2004. Having heard evidence and argument, and being fully advised, this Court finds that the Plaintiff's driver's license revocation/suspension should be sustained. This Court further finds that Plaintiff's petition for modified driving privileges should be denied.

IT IS THEREFORE ORDERED, ADFUDGED AND DECREED:

1). That the revocation/suspension of Plaintiff's driver's license dated 6-5, 2004, is sustained and the period of revocation/suspension shall commence on the 29th day of August, 2004, for a period of 30 days without modification.

2). That the Plaintiff shall surrender all evidence of driving privileges, prior to the above commencement date, to the Department of Public Safety, P.O. Box 11415, Oklahoma City, Oklahoma 73136. Credit for time served shall not commence until a filed copy of this order and all evidence of driving privileges has been surrendered.

APPENDIX B

3). That bond is exonerated and any previous Order of this Court relating to driving privileges is vacated.

4). That should this matter be appealed, the Department, upon receipt of an Oklahoma Supreme Court file stamped copy of a suspension. During the pendency of appeal, a temporary driving permit shall be issued entitling the Plaintiff full driving privileges, if otherwise eligible.

Signed this 28th day of July, 2004.

s/ Glenn M. Jones

Judge of the District Court

s/ Zachariah Ross

Pro se

s/ Kenneth T. Linn

Attorney for Defendant

Legal Misc 04-0084

Sustain w/o mod 796

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED IN THE DISTRICT COURT
OKALHOMA COUNTY, OKLA.

JUL 28 2004

PATRICIA PRESLEY, COURT CLERK

by _____
Deputy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

ZACHARIAH L. ROSS,)	
Plaintiff,)	
)	
vs.)	Case No. CJ-2004-5313
)	
STATE OF OKLAHOMA,)	
Ex rel. OKALHOMA)	
DEPARTMENT OF PUBLIC)	
SAFETY,)	
Defendant.)	

ORDER

This matter comes on for hearing this 1st day of April, 2005. Plaintiff appears personally and the Defendant appears by and through its attorney, Jerry C. Blackburn. The Court upon reviewing the Court file and hearing the arguments of the parties finds that Plaintiff's Motion for Modification and for Contempt should be denied on the ground that the Court lacks jurisdiction under 47 O.S. Supp. 2003 §6-211.

THEREFORE IT IS OREDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Modification and Motion for Contempt is denied.

s/ Glenn M. Jones
Judge of the District Court

s/ Zachariah Ross
Zachariah Ross, Pro se
5521 Cloverlawn Dr.
Oklahoma City, OK 73135

APPENDIX C

s/ Jerry C. Blackburn
Jerry C. Blackburn OBA#828
Attorney for Defendant
PO Box 11415
Oklahoma City, OK 73136
(405) 425-2148

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED IN THE DISTRICT COURT
OKALHOMA COUNTY, OKLA.

APR - 1 2005

PATRICIA PRESLEY, COURT CLERK

by _____
Deputy

IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

Monday, October 3, 2005

THE CLERK IS DIRECTED TO ENTER THE
FOLLOWING ORDERS OF THE COURT:

* * *

101,140 Zachariah L. Ross v. State of Oklahoma, ex
rel., Department of Public Safety
Petition for certiorari is denied.
ALL JUSTICES CONCUR

* * *

s/ Joseph M. Watt
CHIEF JUSTICE

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT 3 2005
MICHAEL S. RICHIE
CLERK

APPENDIX D

47 O.S. §6-211

A. Any person denied driving privileges, or whose driving privilege has been canceled, denied, suspended or revoked by the Department, except where such cancellation, denial, suspension or revocation is mandatory, under the provisions of Section 6-205 of this title, or disqualified by the Department, under the provisions of Section 6-205.2 of this title, shall have the right of appeal to the district court as hereinafter provided. Proceedings before the district court shall be exempt from the provisions of the Oklahoma Pleading and Discovery codes, except that the appeal shall be by petition, without responsive pleadings. The district court is hereby vested with original jurisdiction to hear said petition.

B. A person whose driving privilege is denied, canceled, revoked or suspended due to inability to meet standards prescribed by law, or due to an out-of-state conviction or violation, or due to an excessive point accumulation on the traffic record, or for an unlawful license issued, may appeal in the county in which the person resides.

C. Any person whose driving privilege is canceled, denied, suspended or revoked may appeal to the district court in the county in which the offense was committed upon which the Department based its order.

D. A person whose driving privilege is revoked or denied or who is denied a hearing pursuant to Section 753 or 754 of this title may appeal to the district court in the county in which the arrest occurred relating to the test refusal or test result, as shown by the records of the Department.

E. The petition shall be filed within thirty (30) days after the order has been served upon the person, except a petition relating to an implied consent revocation shall be filed within thirty (30) days after the Department gives notice to the person that the revocation is sustained as provided in Section 754 of this title. It shall be the duty of the district court to enter an order setting the matter for hearing not less than

APPENDIX E

fifteen (15) days and not more than thirty (30) days from the date the petition is filed. A certified copy of petition and order for hearing shall be served forthwith by the clerk of the court upon the Commissioner of Public Safety by certified mail at the Department of Public Safety, Oklahoma City, Oklahoma.

F. At a hearing on a revocation by the Department pursuant to the implied consent laws as provided in Sections 6-205.1, 753 and 754 of this title, the court shall not consider the merits of the revocation action unless a written request for an administrative hearing was timely submitted to the Department and the person actually exercised the opportunity to appear as provided in Section 754 of this title and the Department entered an order sustaining the revocation.

G. Upon a hearing relating to a revocation pursuant to a conviction for an offense enumerated in Section 6-205 or 6-205.2 of this title, the court shall not consider the propriety or merits of the revocation action, except to correct the identity of the person convicted as shown by records of the Department.

H. In the event the Department declines to modify a revocation order issued pursuant to Section 753, Section 754, paragraph 2 of subsection A of Section 6-205 or Section 6-205.1 of this title, which is subject to modification pursuant to Section 11-906.4 of this title or Section 6-205.1 of this title, a petition for modification may be included with the appeal or separately filed at any time, and the district court may, in its discretion, modify the revocation as provided for in Section 755 of this title.

I. The court shall take testimony and examine the facts and circumstances, including all of the records on file in the office of the Department of Public Safety relative to the offense committed and the driving record of the person, and determine from the facts, circumstances, and records whether or not the petitioner is entitled to driving privileges or shall be subject to the order of denial, cancellation, suspension or

revocation issued by the Department. The court may also determine whether or not, from the person's previous driving record, the order was for a longer period of time than such facts and circumstances warranted. In case the court finds that the order was not justified, the court may sustain the appeal, vacate the order of the Department and direct that driving privileges be restored to the petitioner, if otherwise eligible. The court may, in case it determines the order was justified, but that the period of the suspension or revocation was excessive, enter an order modifying the same as provided by law.

J. The testimony of any hearing pursuant to this section shall be taken by the court stenographer and preserved for the purpose of appeal and, in case the Department files notice of appeal from the order of the court as provided herein, the court shall order and direct the court clerk to prepare and furnish a complete transcript of all pleadings and proceedings, together with a complete transcript taken at said hearing at no cost to the Department, except the cost of transcribing.

K. In order to stay or supersede any order of the Department, the petitioner may execute and file a cash appeal bond in the sum of Two Hundred Fifty Dollars (\$250.00) with the clerk of the court, to be approved by the court clerk. A certified copy of the bond endorsed with the approval of the court clerk shall be served along with the notice of hearing and petition.

The bond shall be to the State of Oklahoma and conditioned that the petitioner will prosecute the appeal with due diligence and during pendency of the appeal abide by and not violate any of the laws of this state or any other state in the operation of a motor vehicle, and that the petitioner will abide by and perform the final judgment of the court therein, and in case the appeal is finally denied the appellant will pay all court costs incurred in the appeal in the district court. If the petitioner is convicted of a traffic offense during

the pendency of the appeal or fails to prosecute the appeal with due diligence, the bond may be forfeited to the court fund upon application by the Department and after hearing before the court in which the appeal is pending.

L. After filing and approval of the appeal bond and the furnishing thereof to the Department as hereby provided, the Department shall restore driving privileges to the person if otherwise eligible, and the person shall be permitted to operate a motor vehicle pending the appeal, under terms and conditions as prescribed in the bond which shall include the installation of an ignition interlock device on every motor vehicle operated by the person, pursuant to Section 754.1 or 755 of this title, if the person was denied modification pursuant to any provision of paragraph 2 of subsection A of Section 6-205 or Section 6-205.1, 753 or 754 of this title; provided, however, if the order of the Department is sustained in final judgment, the court shall, in such final judgment, enter an order extending the period of suspension or revocation for such time as the petitioner was permitted to operate motor vehicles under the provisions of an appeal bond, and the court shall also in such final judgment direct and require the immediate surrender of any driver license or licenses to the Department.

M. An appeal may be taken by the person or by the Department from the order or judgment of the district court to the Supreme Court of the State of Oklahoma as otherwise provided by law.